

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAEL WILCOX,

Plaintiff,

v.

MAXINE MEHNER, et al.,

Defendants.

No. 2:21-cv-02140 TLN CKD PS

ORDER

Plaintiff has requested a voluntary dismissal of this case without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). (ECF No. 9.) Federal Rule of Civil Procedure 41(a)(1)(A) provides that “the plaintiff may dismiss an action without a court order by filing . . . (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . .” “Under Rule 41(a)(1), a plaintiff has an absolute right voluntarily to dismiss his action prior to service by the defendant of an answer or a motion for summary judgment. Even if the defendant has filed a motion to dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal under Rule 41(a)(1). The dismissal is effective on filing and no court order is required...Unless otherwise stated, the dismissal is ordinarily without prejudice to the plaintiff’s right to commence another action for the same cause against the same defendants.” Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995); see also United States v. Real Property Located at 475 Martin Lane, Beverly Hills, CA, 545 F.3d 1134, 1145 (9th

1 Cir. 2008) (noting that dismissal under Rule 41(a)(1)(A)(i) requires no action on the part of the  
2 court and divests the court of jurisdiction once the notice of voluntary dismissal is filed).

3 Because defendants have not yet served an answer or motion for summary judgment in  
4 this case, plaintiff's request for dismissal is effective without a court order. Accordingly, for  
5 purposes of clarity, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's motion for dismissal (ECF No. 9) is granted as set forth above;
- 7 2. The action is DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of Civil  
8 Procedure 41(a)(1)(A)(i);
- 9 3. The pending motions by defendants (ECF Nos. 4 and 5) are DENIED AS MOOT; and
- 10 4. The Clerk of Court is directed to CLOSE this case and vacate all dates.

11 Dated: January 14, 2022

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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